

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIO V. LLANOS.

Plaintiff,

No. C 08-0532 PJH

v.

AMC MORTGAGE SERVICES..

Defendant.

ORDER DISMISSING COMPLAINT

ANSWERING QUESTIONS

Defendant.

Before the court is plaintiff Julio V. Llanos' application to proceed in forma pauperis ("IFP") and "Petition for Libel of Review of an Administrative Judgment," both of which were filed January 24, 2008. This case was originally assigned to a magistrate judge, and was reassigned to the undersigned following plaintiff's declination to consent to the jurisdiction of the magistrate judge. Plaintiff filed the identical complaint and IFP application against another defendant in Julio Llanos v. Washington Mutual, C 08-0552 PJH, on January 25, 2008. This court dismissed that complaint on February 1, 2008.

The court may authorize a plaintiff to file an action in federal court without prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such fees or give security therefor. 28 U.S.C. § 1915(a). The in forma pauperis statute also provides that the court shall dismiss the case if at any time the court determines that the allegation of poverty is untrue, or that the action (1) is frivolous or malicious, (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Here, plaintiff's application fails to provide a viable allegation of poverty, and the petition itself fails to state any claim upon which relief may be granted. First, in his IFF application, plaintiff states that he is employed by Synergy Companies, and that his gross salary per month is "\$41,700," with a net monthly income of "\$30,004.00." Plaintiff also indicates that he owns a home, and that he owns two vehicles which are not financed.

1 Plaintiff's monthly debt payments total \$310.00. It appears that plaintiff may have made a
2 common mistake, and listed his yearly gross and monthly incomes, as opposed to his
3 monthly income. Even so, however, plaintiff's allegations as a whole make it difficult to
4 determine whether plaintiff warrants IFP status; a net salary of \$2500 per month (based on
5 a yearly net income of \$30,004.00), in view of only \$310.00 worth of debt payments per
6 month, and the fact that plaintiff owns a home and two automobiles, counsel against a
7 finding of poverty, and the court so finds.

8 Even had plaintiff sufficiently alleged that his financial status warrants IFP treatment,
9 however, his complaint fails to state a claim. Plaintiff alleges, for example, that he is
10 petitioning the court for a "Review of Foreign Judgment," without indicating the foreign
11 judgment for which she seeks review. He also asserts that all parties are "U.S. Vessels
12 and fit the legal definition of a U.S. Vessel," such that the "Public Vessels Act" applies, but
13 never alleges any conduct allegedly falling under the Act. Similarly, he invokes the First
14 Judiciary Act, Foreign Sovereign Immunity Act, Bills of Lading Act, and Admiralty Extension
15 Act, without ever clearly defining the nature of any conduct or grievances that fall under any
16 of these Acts. Finally, while plaintiff seeks relief in relation to an alleged
17 "agreement/contract" and further seeks to have the court "enforce the Administrative
18 findings in the perfected agreement," plaintiff fails to sufficiently identify the nature of the
19 alleged agreement or any administrative decision. In sum, the court can discern no basis
20 upon which relief may be granted to plaintiff.

21 Accordingly, the instant complaint is hereby DISMISSED, pursuant to 28 U.S.C. §
22 1915(e)(2)(B), and plaintiff's corresponding application to proceed in forma pauperis is
23 furthermore DENIED as moot. The dismissal is with prejudice. The clerk shall close the
24 file.

25 **IT IS SO ORDERED.**

26 Dated: May 8, 2008



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PHYLLIS J. HAMILTON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JULIO V. LLANOS,

Case Number: CV08-00532 PJH

Plaintiff,

CERTIFICATE OF SERVICE

v.

AMC MORTGAGE SERVICES, et al,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 9, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Julio Victor Llanos
651 Templeton Avenue
Daly City, CA 94014-1258

Dated: May 9, 2008

Richard W. Wiking, Clerk
By: Frank Justiliano, Deputy Clerk